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10/696,894	10/30/2003	Gary W. Ramsden	331235-00019	9250
27160 7590 01/29/2008 PATENT ADMINISTRATOR KATTEN MUCHIN ROSENMAN LLP 1025 THOMAS JEFFERSON STREET, N.W. EAST LOBBY: SUITE 700 WASHINGTON, DC 20007-5201				
EXAMINER				
CASLER, TRACI				
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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
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8 *Ex parte* GARY W. RAMSDEN
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11 Appeal 2007-3141
12 Application 10/696,894
13 Technology Center 3600
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16 Decided: January 29, 2008
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19 Before TERRY J. OWENS, ANTON W. FETTING, and JOSEPH A. FISCHETTI,
20 *Administrative Patent Judges*.

21 FETTING, *Administrative Patent Judge*.

22 DECISION ON REQUEST FOR REHEARING
23

24 The Appellant filed a REQUEST FOR REHEARING PURSUANT TO 37
25 C.F.R. § 14.52 on December 10, 2007.

26 The Examiner rejected claims 77, 79, and 80. We affirmed these rejections in
27 our October 10, 2007 Decision. The Appellant seeks reconsideration of the
28 decision to affirm these rejections.

1 We CONSIDER the arguments in the REQUEST FOR REHEARING, and
2DENY the REQUEST FOR REHEARING.

3 ISSUES

4 The issue pertinent to this request is whether the Appellant has sustained his
5burden of showing that we misapprehended the art or the claims and thus erred in
6sustaining the rejections of claims. 37 C.F.R. § 41.52(a).

7 ANALYSIS

8 We found in our decision that claims 77, 79, and 80 were unpatentable under
935 U.S.C. § 103(a) over the prior art (Decision 12).

10 The Appellant argues that (1) the Board failed to find that the prior art
11described a printer for printing a shipping receipt for an amount including at least
12the cost of delivering said parcel or envelope to said destination via the delivery
13option chosen by said customer (Request 2); (2) the Board failed to find the level
14of skill in the art at the time of the invention (Request 3); and (3) the Board
15misconstrued the calculation of cost in FF 02 of the Decision (Request 4).

16 *Argument (1) the Board failed to find that the prior art described a printer for*
17 *printing a shipping receipt for an amount including at least the cost of delivering*
18 *said parcel or envelope to said destination via the delivery option chosen by said*
19 *customer*

20 Apparently, the Appellant, after admitting that Pusic does describe a printer,
21contends that the Board failed to make a finding that the printer printed a receipt
22(Request 2: Bottom ¶, fifth to seventh lines).

1 However, the Appellant fails to explain, and we do not see how the finding of
2 this element affects the Board's decision affirming the rejection of claim 77.
3 Regarding the teachings of Hsieh and Pusic, the Appellant does not contend that
4 we misapprehended Appellant's arguments in the Brief.

5 As the Decision (p. 9) states, the Appellant only contended that Hsieh does not
6 compute costs based on the destination; that Pusic fails to describe a selectable
7 delivery option; that Hsieh teaches away from claim 77 because it is limited to
8 computations using two variables and there would be no reasonable expectation of
9 success in achieving the limitations of claim 77 for similar reasons; and there is no
10 suggestion to combine Hsieh and Pusic. The Appellant concluded that the
11 combination of Hsieh and Pusic do not allow for different delivery options or are
12 limited to delivery options whose pricing is independent of destination. We made
13 findings as to each of these contentions. The Appellant does not dispute this.

14 Thus, the Appellant did not disagree that Pusic disclosed printing a receipt *per*
15 *se*. The Examiner had made such a finding (Answer 4). We were not placed in a
16 position to consider the teachings of Hsieh or Pusic regarding printing of a receipt
17 *per se* with respect to claim 77, only the contents of what was printed. The
18 Examiner's finding that a receipt was printed was uncontested.

19 *Argument (2) the Board failed to find the level of skill in the art at the time of the*
20 *invention*

21 The Appellant contends that the Office's guidelines require a finding of the
22 level of ordinary skill (Request 3). Again, the Appellant is making a contention

1not made in the briefs, and has not argued that he did so, so we were not placed in
2a position to consider this argument.

3 The Appellant admits, however, that we did make such findings in FF 10
4(Request 3:Bottom ¶, second line). Further, the absence of specific findings on the
5level of skill in the art does not give rise to reversible error where the prior art itself
6reflects an appropriate level and a need for testimony is not shown. *See Okajima*
7v. *Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001).

8 *Argument (3) the Board misconstrued the calculation of cost in FF 02 of the*
9 *Decision*

10 The Appellant contends that our construction of the limitation that a cost for
11mailing a parcel or envelope to a destination is a function of a weight and a
12selected delivery option is improper (Request 4). The Appellant contends that the
13Specification supports a construction in which cost is also a function of destination.
14(Request 4).

15 We begin by pointing out that the Examiner did not make a construction as to
16this limitation, and therefore, ours was the first construction placed in the record.

17 In our decision, we found that the plain reading of the limitation meant that the
18function was one of the two variables weight and delivery option (Decision 5: FF
1902). We find that the Appellant has not shown how this construction affects our
20Decision to affirm the Examiner, because the Appellant has not shown a nexus
21between this construction and an argument in favor of patentability. We also find
22that the Appellant has not demonstrated that such a construction does no more than
23reflect breadth of the claim as drafted. The Appellant has pointed to no

1lexicographic definition of the claimed function, nor how having the function be
2independent of destination would be incompatible with the invention.

3 For the above reasons we are not convinced of misapprehension of the issues
4leading to reversible error in our decision. Accordingly, the Appellant's request
5for rehearing is denied,

6 DECISION

7 To summarize, our decision is as follows:

- 8 • We have considered the REQUEST FOR REHEARING
- 9 • We DENY the request that we reverse the Examiner as to claims
- 10 • The rejection of claims 77 and 80 under 35 U.S.C. § 103(a) as unpatentable
11 over Hsieh and Pusic remains affirmed.
- 12 • The rejection of claim 79 under 35 U.S.C. § 103(a) as unpatentable over
13 Hsieh, Pusic, and Tateno remains affirmed.

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16 REHEARING DENIED

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